

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

IN RE: . Case No. 22-19361-MBK  
BLOCKFI INC., et al., . (Jointly Administered)  
Debtors. .  
Thursday, March 23, 2023  
11:29 a.m.

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE MICHAEL B. KAPLAN  
UNITED STATES BANKRUPTCY JUDGE

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EXHIBITS

ID. EVD.

D1 Declaration of Michael DiYanni  
of Moelis & Company

3

4

1 THE COURT: Please make use of the raised hand  
2 function and I'll be able to identify that you wish to be  
3 heard. I think we have three matters or so on the agenda. Let  
4 me turn to debtors' counsel and ask which matters they wish to  
5 pursue first.

6 MR. PETRIE: That would be me.

7 THE COURT: All right.

8 MR. PETRIE: Good morning, Your Honor. This is  
9 Francis Petrie of Kirkland and Ellis, counsel for the debtors.

10 So an amended agenda was actually just filed moments  
11 ago at Docket Number 666 that accounts for everything here, but  
12 we'll take things in the order that's set out there with the  
13 uncontested matters going first.

14 So, Your Honor, the first item we'd like to take up  
15 today is the debtors' motion to sell certain self-mining assets  
16 under Section 363 of the Bankruptcy Code. It was filed at  
17 Docket Number 571 and is going forward on an uncontested basis.

18 So as Your Honor is aware, in light of the bidding  
19 procedures hearing we held in late January, the debtors and  
20 their advisors have undergone a process to market several asset  
21 packages, including certain digital coin self-mining assets  
22 that included a number of physical machines that I'll refer to  
23 as like the self-mining assets.

24 As an initial matter, we filed the declaration of  
25 Michael DiYanni of Moelis at Docket Number 632 to provide the

1 evidentiary basis in support of the mining sale. Mr. DiYanni  
2 is dialed into the Zoom line and he's available to testify or  
3 be cross-examined as needed. But unless there's any questions,  
4 we'd like to admit his declaration into evidence at this time.

5 THE COURT: I'm prepared to accept the declaration in  
6 lieu of direct testimony, unless there's any objection raised  
7 by anyone.

8 (No audible response)

9 THE COURT: All right. Thank you. We'll have it  
10 marked as D1.

11 \*(Debtors Exhibit D1 is admitted to evidence)

12 MR. PETRIE: Great. Thank you, Your Honor.

13 For a brief overview, following the process that we  
14 laid out at the bidding procedures hearing, Moelis reached out  
15 with initial rounds of outreach and that yielded many  
16 indications of interest, which amounted in five binding bids  
17 for the entire package of self-mining assets with seven other  
18 parties each bidding for specific portions of the self-mining  
19 assets. The debtors, their advisors, and the Committee worked  
20 collaboratively throughout the marketing diligence and bidding  
21 process to ensure that the auction could be competitive and  
22 value maximizing for the debtors' estates.

23 The auction was publicly noticed in accordance with  
24 the bidding procedures and was held on February 28th. Multiple  
25 parties submitted competing bids over the course of the day,

1 and it was ultimately very competitive. Through this process,  
2 the debtors and the Committee as a consultation party  
3 determined that the bid that was submitted by U.S. Farms  
4 contemplated the purchase of the entire package of assets and  
5 ultimately was the highest and best offer for all assets.

6           So after productive negotiations with U.S. Farms and  
7 in consultation with the Committee, the APA for the sale of the  
8 mining assets has been fully negotiated and executed and has  
9 been attached to the order as Exhibit 1. A summary of that APA  
10 and the document itself are attached to the motion, but  
11 notably, the APA has very few conditions precedent to closing  
12 and represents a fast and low risk path to bringing  
13 approximately 4.675 million into the debtors' estates.

14           At closing, U.S. Farms will remit the purchase price  
15 to the debtors, less the hold-back amount of 627,500, which  
16 will be held in escrow pending the inspection and testing of  
17 the assets. The applicable legal standard here is the business  
18 judgment rule and entry into this APA is certainly a sound  
19 exercise of the debtors' business judgment. The auction  
20 yielded the best return for these assets and will bring  
21 millions of dollars into the estates. The purchase price is  
22 fair and reasonable and was arrived at after several weeks of  
23 good faith negotiations, including a full auction.

24           Even after the full notice period, no party has filed  
25 an objection to the motion and the debtors have not received

1 any comments to the order. The only remaining item is to gain  
2 this Court's approval.

3 With that, unless Your Honor has any questions, the  
4 debtors respectfully request that the Court grant the relief  
5 sought in the motion and enter the proposed order.

6 THE COURT: Thank you, Counsel.

7 My understanding is that the Committee supports the  
8 proposed transaction as well. Is there anyone who wishes to be  
9 heard with respect to the proposed sale?

10 (No audible response)

11 THE COURT: All right. The Court has reviewed the  
12 APA as well as the underlying motion papers and agrees that  
13 it's in the best interest of the estate to pursue this  
14 transaction. The Court is prepared to make the necessary  
15 findings, including 363(m) findings requested, as well as a  
16 waiver of the 6004(h) relief, unless anybody wishes to address  
17 those issues separately.

18 (No audible response)

19 THE COURT: All right, then.

20 Is there a form of order?

21 MR. PETRIE: The form of order is attached to it.

22 THE COURT: The form of order attached to the papers  
23 is the final product?

24 MR. PETRIE: Yes, Your Honor.

25 THE COURT: All right. Then, we'll --

1 MR. PETRIE: (Indiscernible), I believe.

2 THE COURT: We'll have that entered today.

3 MR. PETRIE: Great. Thank you, Your Honor.

4 THE COURT: Thank you, Counsel.

5 MR. PETRIE: So next, before we jump into the  
6 remaining agenda items, I'll take things slightly out of order  
7 to provide a brief status update of the debtors' cash  
8 management system following our discussions last Monday. It  
9 also feels like much longer than just last Monday that we were  
10 having these conversations, as you can imagine. But the  
11 debtors have been working with the U.S. Trustee and the  
12 Committee to ensure the safety of all of their funds.

13 We've worked collaboratively with those parties and  
14 after many rounds of discussions, the debtors converted the 236  
15 million in the money market funds at Silicon Valley Bank into  
16 cash and moved that cash to their operating account at Silicon  
17 Valley Bridge Bank, as it's now called. At this time, all  
18 deposits at Silicon Valley Bridge Bank, including new deposits,  
19 are a hundred percent insured by the FDIC.

20 But for the future, we have opened new bank accounts  
21 at a couple of banks, and we're working with each of them to  
22 obtain surety bonds and/or pledge collateral as required by the  
23 Uniform Depository Agreement. So we have a permanent solution  
24 to house these funds safely. We intend to bring all debtor  
25 funds into compliance with Section 345 as soon as possible.



1           As you can imagine, there's a lot of uncertainty in  
2 the banking system right now, and we're attempting to navigate  
3 that every day. With that being said, we do represent that we  
4 are attempting to come into compliance with Section 345 as soon  
5 as we can, and I believe the U.S. Trustees Office would like to  
6 make some comments on the record as well.

7           THE COURT: All right. Thank you, again.

8           Ms. Bielskie. Good morning.

9           MS. BIELSKI: Good morning, Your Honor. And thank  
10 you.

11           As Counsel said, yes, the U.S. Trustee has been  
12 communicating with Counsel over the last about week and a half.  
13 Given the representations that the funds at Silicon Valley  
14 Bridge Bank are 100 percent insured, including the new  
15 deposits, the United States Trustee does not object to the  
16 money mark -- well, now that it's been converted, that's news  
17 to us as of today, that that fund is now converted to cash and  
18 held there with the funds that were already on deposit.

19           The U.S. Trustee also wants to make clear, especially  
20 in light of the recent bank failures, that debtors must take  
21 steps to ensure the money is held in compliant accounts and  
22 compliant accounts are those accounts that are under a  
23 depository agreement and are collateralized or bonded by the  
24 banks.

25           As such, the U.S. Trustee will continue to work with

1 the debtors, with Silicon Valley Bridge Bank, any successor,  
2 and the FDIC to navigate where these funds end up and ensure  
3 that such accounts remain protected in the interim. I do ask  
4 the Court that the pending motion be adjourned to the next  
5 omnibus hearing date while the debtors continue to take steps  
6 to make sure that all of their funds are in compliance with  
7 Section 345.

8 THE COURT: All right. Is there anyone else who  
9 wishes to be heard as far as the status report with respect to  
10 cash management?

11 (No audible response)

12 THE COURT: Then, the pending motion filed by the  
13 Trustee will be carried to, I believe April 19th is the next  
14 omnibus date. So --

15 MS. BIELSKI: Thank you, Your Honor.

16 MR. PETRIE: Correct, Your Honor.

17 THE COURT: -- we will carry that Docket Number 599  
18 to that date. And I thank debtors' counsel for the update and  
19 the cooperative efforts of the U.S. Trustee's Office in this  
20 regard.

21 MS. BIELSKI: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 All right. Let me turn back to debtors' counsel.

24 MR. PETRIE: Your Honor, now I'll turn the virtual  
25 podium over to my co-counsel at Haynes and Boone.

1 MS. CHAVEZ: Good morning, Your Honor. Jordan Chavez  
2 with Haynes and Boone on behalf of the debtors.

3 I'll be taking up the remaining uncontested matter on  
4 the agenda, which is the debtors' motion requesting an  
5 extension of time to assume or reject the non-residential real  
6 property leases, which was filed at Docket Number 572.

7 We're seeking an additional 90 days, which would  
8 bring the deadline to September 25, 2023, based on an initial  
9 210 days provided under the amendment to Section 365(d)(4)  
10 which, although, as we noted in our motion, had a sunset date  
11 of December 27th. Because this case was filed before the  
12 amendment sunset date, we take the position that we have the  
13 initial 210 days and would just request an additional 90 days  
14 to continue our analysis of those leases and how they might be  
15 best assumed or rejected.

16 Depending on the fact that we're running a dual track  
17 process in the case, a potential buyer may want to make that  
18 determination so we think that September 25th gives us ample  
19 time to run that analysis and we would know at that point  
20 whether it will be the debtors making an assumption or  
21 rejection or an assumption and assignment of those leases. And  
22 we did not receive any comments or objections to the motion.

23 So unless Your Honor has any questions, we would  
24 respectfully request that you grant the extension.

25 THE COURT: All right. Thank you, Counsel.

1 Is there anyone appearing remotely wishing to be  
2 heard?

3 (No audible response)

4 THE COURT: Again, I see nobody. Everybody is quiet  
5 today.

6 So for the record, this Court is in agreement with  
7 those courts that have addressed the issue with respect to  
8 application of the extended 210 day period, notwithstanding the  
9 sun setting of the legislation for those cases that were filed  
10 in advance of the sunset date.

11 Given that the Court is also willing to extend the  
12 requested 90 days which brings us, I think we said  
13 September 25, 2023.

14 MS. CHAVEZ: Yes, Your Honor.

15 THE COURT: All right. The Court will -- I believe  
16 we have the order already included with the motion package. Is  
17 that correct?

18 MS. CHAVEZ: Yes, Your Honor. There have been no  
19 changes to the order that was filed with the motion.

20 THE COURT: All right. Then, we'll enter that order  
21 today as well. Thank you, Counsel.

22 That would bring us --

23 MS. CHAVEZ: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 MS. CHAVEZ: That would bring us to the order

1 shortening time with respect to the request for temporary  
2 restraints relative to the adversary proceeding that's been  
3 filed seeking preliminary injunction and other relief.

4 Let me turn to --

5 MS. CHAVEZ: Yes, Your Honor.

6 THE COURT: Counsel, are you handling this matter as  
7 well?

8 MS. CHAVEZ: No. I'll be turning over the virtual  
9 podium to Mr. Kanowitz and Ms. Furness with Haynes and Boone to  
10 address that matter.

11 Thank you.

12 THE COURT: All right. Thank you.

13 Good morning, Mr. Kanowitz.

14 MR. KANOWITZ: Good morning, Your Honor. May it  
15 please the Court. Richard Kanowitz of Haynes and Boone on  
16 behalf of the debtors and debtors in possession.

17 Your Honor, you've laid out the posture of this  
18 matter on the record already, so I won't belabor it. We're  
19 here today pursuant to your order. We could not get to an  
20 agreed temporary restraining order pending the hearing on the  
21 preliminary injunction motion that we filed, which is set for  
22 hearing on April 19th, so we needed to file papers, and Your  
23 Honor, thankfully, granted our hearing for today.

24 I'm going to turn the podium over to my partner,  
25 Aimee Furness. She will be arguing the TRO motion. So I'll do

1 so now, unless you have any questions for me.

2 THE COURT: No. That's fine. Thank you,  
3 Mr. Kanowitz.

4 Ms. Furness, good morning.

5 MS. FURNESS: Good morning, Your Honor. Aimee  
6 Furness with Haynes and Boone, here on behalf of the debtors.

7 And we are here today to request that the Court enter  
8 the order to show cause with temporary restraints. At issue  
9 here are two lawsuits. Both lawsuits are punitive class action  
10 lawsuits brought against the debtors' officers, directors, and  
11 former employees. The first one is entitled Greene vs. Prince,  
12 which is BlockFi CEO and board member, Flori Marquez, which is  
13 BlockFi COO and board member.

14 They name a gentleman called Tony Laura. At least  
15 within BlockFi, there's no such person with that name. We  
16 presume they mean BlockFi's independent board member, Tony  
17 Lauro, Jennifer Hill, which is another independent board  
18 member, and then Gemini Trading which they allege is some sort  
19 of partner of BlockFi. That lawsuit was filed in New Jersey on  
20 February 28, 2023.

21 Different than our papers, I looked again on the  
22 docket this morning, and apparently Gemini Trading has been  
23 served. But we are without information that any of the others  
24 have been served yet in that lawsuit.

25 The second lawsuit is Antonie Elas versus, again,

1 Mr. Prince, Ms. Marquez. That one also includes Amit Cheela,  
2 who is BlockFi's CFO, David Olsson, which is a former senior  
3 vice president, and Samia Bayou, who's also a former senior  
4 vice president. That one is filed in Massachusetts. Both of  
5 those complaints, Your Honor, can be found in the Court's  
6 record at Docket 4-1.

7           The Greene complaint is Exhibit A to the  
8 certification of Mark Renzi, and it's located in the PDF at  
9 Pages 2 through 71. And the Elas complaint is also an exhibit  
10 to the Renzi certification, which is Exhibit B. Again,  
11 Docket 4-1 and Pages 73 through 117. Your Honor, we're here  
12 today requesting emergency relief because Mr. Prince and  
13 Mr. Cheela have both been served with the Elas complaint. They  
14 were served on March 9th making their deadline to assert 12(b)  
15 defenses or answer March 30th, which is next week.

16           The summons served on each of those individuals is  
17 attached, again, to the Renzi certification, which is  
18 Docket 4-1. Those are Exhibit M, as in Mary, and N, as in  
19 Nancy, beginning on Pages 208 and 266.

20           By way of this adversary proceeding, the debtors  
21 ultimately seek one of two things. One, a declaration that the  
22 automatic stay actually applies to these lawsuits or that the  
23 stay can be and should be, and the Court finds, is extended to  
24 the prosecution of these two lawsuits.

25           And the second thing the debtors seek in the

1 alternative is the issuance of a preliminary injunction under  
2 Section 105, staying the prosecution of these two cases.  
3 That's the ultimate relief that we seek. And briefly, Your  
4 Honor, the facts prior to the bankruptcy case, a lawsuit was  
5 filed by the same counsel that represents Greene in the matter  
6 that we're discussing today, alleging basically the same claims  
7 against BlockFi.

8           There are allegations of violations related to  
9 securities law, both federal as well as various states. In  
10 that matter, it was called Mangano, and for the Court's  
11 purposes, the amended complaint in that matter is attached as  
12 Exhibit O to the Renzi certification, and that starts on  
13 Page 324.

14           In the Mangano matter, the issues had been fully  
15 briefed. The motion to dismiss had been completely briefed,  
16 and it was awaiting a decision before the case was  
17 administratively closed due to the bankruptcy. So then what  
18 happens, a very short time later, counsel in these two matters  
19 filed these lawsuits. Both lawsuits admit and proudly state  
20 none of the defendants here are subject to the automatic stay.  
21 None of them are in bankruptcy. They're not subject to the  
22 stay, but they're going to go forward.

23           Both lawsuits are against the current officers,  
24 current directors, and former employees. So, Your Honor,  
25 again, we are here asking today for a temporary restraining



1 order and there are four factors that the Court needs to look  
2 at to determine whether an injunction is appropriate in this  
3 case.

4           Your Honor, unfortunately, you're probably going to  
5 hear almost the same argument again on April 19th because the  
6 standard is the same, whether we are requesting a temporary  
7 restraining order or a preliminary injunction. The first  
8 factor is whether there's a reasonable probability of success  
9 on the merits. And, Your Honor, we're well aware that you are  
10 well aware of these elements and the standards applied because  
11 this case is remarkably similar to the LTL matter in which you  
12 heard a similar request to stay securities class actions as a  
13 result of the bankruptcy.

14           So for our purposes in the bankruptcy context,  
15 success on the merits really means a successful reorganization.  
16 Under the case law, in a case that's in the early stages,  
17 courts say that there should be a rebuttable presumption that  
18 the company is making a good faith effort to reorganize. So in  
19 this matter, Your Honor, several examples demonstrate that  
20 BlockFi and the debtors are attempting a good faith  
21 reorganization.

22           For example, the Court has granted several first day  
23 orders. Those are located at Dockets 298, 300, 303 through  
24 306, and 308. As we just heard, Your Honor, there's been an  
25 auction process for various assets and the plan is on file and

1 that's Docket 22.

2 Factor two that the Court should review in  
3 determining whether or not a TRO is appropriate is whether the  
4 continuation of these two lawsuits will irreparably harm the  
5 debtors. And of course, Your Honor, we believe they absolutely  
6 will, and none of the harms in this case are remote or  
7 speculative. They are demonstrative and they are imminent.

8 The first is, frankly, Your Honor, the debtors are  
9 between a rock and a hard place as it relates to this. If  
10 these lawsuits continue, the basis of these lawsuits is the  
11 allegation by the plaintiff that the BIAs, the BlockFi interest  
12 accounts are securities. That's their allegation. If that's  
13 determined in these lawsuits with these officers and directors,  
14 BlockFi is left out of that argument.

15 It is a critical question and it's the exact same  
16 question that was present in the Mangano case that was filed  
17 pre-bankruptcy and was stayed as a result of the bankruptcy.  
18 The other issue that the plaintiffs in these two matters are  
19 challenging are actions that they allege violated securities  
20 law. BlockFi can only act through individuals. As a company,  
21 it can't act on its own. And here, they're alleging, instead  
22 of saying BlockFi in their pleadings, BlockFi sold, BlockFi  
23 offered and sold, they are now saying these individuals caused  
24 BlockFi to offer and sell.

25 They're basically the same allegations, and as Your

1 Honor has noted in other opinions, that puts the debtors in a  
2 very precarious position because the debtors' actions are what  
3 is actually going to be judged in these two lawsuits. There is  
4 an identity of interest between these officers and directors  
5 and the debtors.

6 A judgment against these officers and directors is  
7 more or less a judgment or finding against the debtors, and  
8 that is an irreparable harm for which there is nothing that can  
9 be done once those things happen. These lawsuits, Your Honor,  
10 are clearly an effort only to avoid the automatic stay.

11 As I mentioned, Your Honor, they made very small  
12 changes. So instead of saying BlockFi offered and sold, that  
13 becomes in the new pleading, the BFI defendants, which are the  
14 individuals, caused BlockFi to offer and sell. And just as an  
15 example, Your Honor, to compare those two, these are attached  
16 again to the Renzi certification at 4-2 is the Docket Number.  
17 The first one I mentioned was Exhibit O, and you can find that  
18 on Page 327. The second one I mentioned is Exhibit A and  
19 that's on Page 4.

20 In addition, Your Honor, just to go to show that  
21 these are simply an effort to avoid the automatic stay, in the  
22 Greene matter, they only mention, as far as any statements,  
23 allegations, or anything, Prince and Marquez. There are  
24 absolutely no allegations at all other than identifying as  
25 parties, Mr. Lauro or Ms. Hill. And the other one, Elas, is

1 the same. The only mention of the actual individual officers  
2 and directors is one statement that Olsson and Bayou, those are  
3 two of the former employees, resigned. That matter has  
4 Mr. Cheela, which is the current CFO, as a party. There's  
5 absolutely no allegation about him at all other than  
6 identification as a party. These two are simply efforts to  
7 avoid the automatic stay.

8           The debtors are really in a bad spot because they  
9 have to participate to protect their interests. Again, on  
10 whether these BIAs are securities and whether the actions of  
11 the officers and directors somehow violated security claims  
12 because that necessarily means that BlockFi also violated some  
13 security claims. So they can either participate and have their  
14 rights and obligations outlined, or they can enjoy the stay.  
15 That is a choice that BlockFi has to make and courts frequently  
16 say that's an irreparable harm.

17           In the In re Calpine case, which is out of the  
18 Southern District of New York, the court says having to be put  
19 in this Hobson's choice between these two options is an  
20 irreparable harm. As the Court knows, actions like this can  
21 subject the debtors to something called record taint, meaning a  
22 decision, and that one can be used against the debtors.

23           Collateral estoppel is possible. *Res judicata* is  
24 also possible. The claims, the allegations, the assertions,  
25 and the decisions in these lawsuits against the officers and

1 directors are going to be the same ones as against the debtors.  
2 And where we sit now, the debtors are going to be unable to  
3 protect their interests.

4 Another irreparable harm here is the depletion of  
5 estate assets and we think this absolutely goes to the  
6 extension of the automatic stay, which isn't exactly what we're  
7 talking about today. But it is also an irreparable harm. This  
8 Court has found in the In re LTL case that insurance is the  
9 property of the estate.

10 In this matter, there is a policy that covers both  
11 the company as well as officers and directors. And I would  
12 like to point you, Your Honor, to Docket Number 11 in the main  
13 case. That is a motion for entry of orders regarding insurance  
14 policies, and in there in Schedule C on page 30 of that  
15 document, it outlines the policy held by the debtors, one of  
16 which is a D&O policy for \$2 million. That policy covers both  
17 the debtors and the officers and directors.

18 If these two lawsuits continue to go forward, that  
19 asset of the estate, the insurance coverage, will be depleted.  
20 To the extent it's reduced at all, it is any irreparable  
21 injury. Debtors cannot go and get it back. They can't reclaim  
22 the insurance policy once it is depleted.

23 Your Honor, the Fourth Circuit in A.H. Robins vs.  
24 Piccinin, P-I-C-C-I-N-I-N, 788 F.2d 1008. The Court there  
25 found that the insurance is property of the estate and

1 depleting that insurance is irreparable harm for which an  
2 injunction can issue.

3           Mr. Renzi's certification gives further detail about  
4 the insurance policies. And, again, that's on Docket  
5 Number 4-1 on Pages 4 and 5, in Paragraphs 21 and 22. And he  
6 says there that the claims made against the officers and  
7 directors will be subject to those insurance policies. He  
8 outlines what the policy provides coverage for. And he  
9 outlines that the debtors and their officers are entitled to  
10 use the proceeds for, among other things, defending actions and  
11 settlements and things like that.

12           So, again, while we do believe that's probably a  
13 352(a)(3), meaning these cases will actually deplete estate  
14 assets and should be stayed, it's also an irreparable harm that  
15 the Court can and should consider in whether to issue the show  
16 cause here.

17           Another irreparable harm that the debtors are facing  
18 is that these lawsuits are going to interfere with  
19 reorganization. The In re Calpine case I mentioned also found  
20 that to be irreparable harm. In this case, it's going to  
21 divert the time and energy that our officers and directors have  
22 for restructuring. And we're seeing it already, Your Honor,  
23 frankly. Mr. Olsson, for example, has contacted debtors to  
24 say, I keep getting names. In securities litigation context,  
25 plaintiff's counsel issue press releases it seems like daily.

1 And every time that comes up, the individual  
2 defendants, including those that are not mentioned other than  
3 as parties, are getting pinged as far as these are press  
4 releases to which they end up contacting the debtors, asking  
5 for updates and indemnification issues. It is already  
6 diverting time and energy. The Renzi certification, again,  
7 Docket 4-1, Page 5, Paragraph 23, he outlines this and he says  
8 that if the focus and energy of our officers and directors is  
9 diverted, the reorganization of the company will be impacted.  
10 I'm not sure there can be much argument about that.

11 The next irreparable harm is the company's  
12 indemnification obligations and they are extensive. In the  
13 Calpine matter, Your Honor, the Southern District of New York  
14 found that indemnification can also be an irreparable harm.  
15 Again, we certainly believe that that relates to extension of  
16 the stay, but today is focusing only on irreparable harm and  
17 that's what we have here.

18 I'm not going to walk through every one, Your Honor,  
19 but I just request a tiny bit of patience to walk through a few  
20 of the indemnification obligations that the company has. The  
21 first source is the amended and restated bylaws off BlockFi.  
22 This is again attached to the Renzi certification, and it is  
23 found on Page 119. That's the beginning of the by-laws. And  
24 I'm actually going to turn to Page 133. Most of the  
25 indemnification obligation are very similar, so again, I'm not

1 going to walk through every single one. But the bylaws --

2 THE COURT: Counsel, I'll short-circuit it just a bit  
3 because I have read the papers, including the requisite  
4 exhibits and the language in the agreements, especially since  
5 we're doing this remotely. Let me let you finish.

6 I see Mr. Squitieri with a hand raised. Did you want  
7 to speak now, or is this more for when you want to respond,  
8 Mr. Squitieri?

9 MR. SQUITIERI: (No audible response)

10 THE COURT: You need to put your mic on.  
11 There you go.

12 MR. SQUITIERI: Your Honor, I thought you were  
13 bringing the debtors' counsel presentation to a conclusion and  
14 then I just wanted to queue up. But I can wait.

15 THE COURT: All right. That's fine. Thank you.

16 Ms. Furness, please continue.

17 MS. FURNESS: Thank you, Your Honor.

18 And, as I mentioned, the debtors have indemnification  
19 obligations in bylaws and specific indemnification agreements.  
20 In addition to that, the debtors have actually received  
21 indemnification demands. They are also attached to the Renzi  
22 certification. I'm sure Your Honor has looked at them. That,  
23 again, is an irreparable harm.

24 The fourth factor that the Court should review in  
25 determining whether or not to issue an injunction in this



1 matter is the public interest. And here, the public interest  
2 is for the reorganization of companies, for the debtors to be  
3 able to reorganize. And most of the cases say that one of the  
4 most important public interests is that the debtor is allowed  
5 to march down this path and come out on the other side.

6 What we're requesting here, Your Honor, is the  
7 suspension of the status quo. The status quo currently is that  
8 these individual officers and directors are not required to  
9 answer or get otherwise involved, engage counsel, start the  
10 bills running, reducing the insurance, beginning (audio  
11 interference). That's what we're asking for, Your Honor.  
12 We're asking for that for a total 28 days.

13 As Mr. Kanowitz mentioned, we have set the motion for  
14 preliminary injunction for April 20th, or sorry, April 19th.  
15 If Your Honor were to issue a TRO today as we requested, 28  
16 days will be through April 20th. We do believe good cause  
17 exists to extend it for 28 days because the Court (audio  
18 interference) for us on April 19th, which would also allow the  
19 adversary defendants here time to ramp up and get up to speed.

20 So, Your Honor, the debtors meet all four factors and  
21 we request that the Court do so. The Court is also not  
22 required to request a bond of the debtors. I'm sure Your Honor  
23 knows that under Federal Rule of Bankruptcy Procedure 76 (audio  
24 interference).

25 THE COURT: I think you're off. Your mic is off.

1 MS. FURNESS: We tried to get a agreement with the  
2 adversary defendant's counsel over the course of the last many  
3 days. We served them with the complaint that was filed within  
4 18 minutes of it being filed. We sent a proposed TRO. We had  
5 a call yesterday. We got responses on the proposed TRO, and  
6 unfortunately, the provisions that adversary defendant's  
7 counsel brought to us denied, for example, that this Court had  
8 exclusive jurisdiction over such an order.

9 And they also requested things related to the plan  
10 that debtors could not agree to, some ultimate decisions on the  
11 plan. So we have attempted that. Again, we're only asking for  
12 28 days. There's a *de minimus* if any amount of harm on the  
13 adversary defendants at this point. Mr. Squitieri will likely  
14 tell you about the extension under the PSLRA, and therefore,  
15 we'll ask that you enter the TRO that we've requested.

16 THE COURT: All right. Thank you, Counsel.

17 I saw Mr. Fishbein and Mr. Squitieri. Let me turn to  
18 Mr. Squitieri first.

19 MR. SQUITIERI: Thank you, Your Honor. Good morning,  
20 Lee Squitieri, Squitieri and Fearon, on behalf of plaintiff,  
21 Trey Green.

22 Trey Greene is about a \$1.5 million loser in the  
23 BlockFi failure. And so he brings a substantial claim before  
24 this Court. And I think the Court wisely said, let's shortcut  
25 this, and I will.

1           There was a call yesterday at 2:30 which I could not  
2 attend. I asked for it to be at 3:30 but debtors' counsel was  
3 busy and I understand that. This morning, I contacted them. I  
4 asked them -- I told them that I would agree to the TRO. Of  
5 course, that's without admitting or denying or conceding any of  
6 the basis for it, and I would agree to it in advance of the PI  
7 on April 19th.

8           I asked him if they'd be willing to get an agreement  
9 for expedited discovery because this is a little more complex  
10 than just shutting down this lawsuit for the benefit of the  
11 debtor. Why is it more complex? For reasons that haven't been  
12 brought to the Court's attention.

13           One is that the insurance policy whose assets we're  
14 supposed to be preserving is only for \$2 million. Conceitedly,  
15 that is a asset of the estate because it provides debtor  
16 coverage. But there appears to be a \$30 million Side A  
17 coverage policy only covering the offices and directors.  
18 Side A only coverage is typically held not to be an asset of  
19 the estate. Why is that so very relevant to us?

20           It is relevant because there are news reports that  
21 claims have been made against that policy and payments have  
22 been made under that policy. That policy is very likely the  
23 only source of a lot of claimants' payments. And so we want  
24 that fleshed out in advance of the preliminary injunction  
25 hearing.

1           We want discovery on that. We want discovery on the  
2 exact role of Prince, Marquez, and the three independent  
3 directors that we've named. We have no desire to disrupt the  
4 orderly proceeding of this Bankruptcy Court. We have no desire  
5 to interfere in the reorganization except to the extent that  
6 the debtor has some third party releases up their sleeve for  
7 the principles who are actually responsible for all this.

8           And so those are our interests in having our lawsuit  
9 advance. And I might add that it appears from the public  
10 reports that the \$30 million was used to pay off claims of  
11 private investors in BlockFi who complained that they had been  
12 duped into purchasing the company's securities. This is a  
13 privately held company, Your Honor, private in that it's not a  
14 exchange listed company, so it qualifies as closely held.

15           And when the debtor, pre-repetition of course, when  
16 the debtor in its officers and directors willingly allow a  
17 major source of coverage for their liability to be paid to what  
18 appear to be friendly parties, we, the public account holders,  
19 are very worried. So there's a little more complexity to this  
20 than just the TRO. But it's 28 days. The PI is the main  
21 event. And so we, or I, on behalf of Trey Green, without  
22 conceding or admitting any of the underlying factors for the  
23 TRO, will agree to the TRO. We would like leave to make a  
24 motion for expedited discovery. It will be as limited as  
25 possible.

1           And at this time, Your Honor, we would like one  
2 exception to the TRO, and that is to be allowed to meet the May  
3 1st deadline we have with respect to the filing of lead counsel  
4 motions in the District of New Jersey. Why? It is because the  
5 Private Securities Litigation Reform Act has this threshold  
6 mechanism for organizing all cases, putting them into one,  
7 appointing a lead counsel and a lead plaintiff.

8           I dare say that when that was passed in 1995, it was  
9 passed for the protection of defendants so that they wouldn't  
10 have to run all over the country chasing different plaintiffs  
11 and different lawsuits. Courts have uniformly held that  
12 defendants have no standing on a lead counsel motion. It is  
13 without prejudice to their rights in any further Rule 23  
14 applications to claim that the lead plaintiff is not qualified,  
15 without being able to at least file the papers on May 1st and  
16 then someone can reach out to the judge in New Jersey and say  
17 don't make any order yet.

18           But without allowing us to meet the May 1st deadline,  
19 it throws the whole applicability of the Reform Act up in the  
20 air. The May 1st date cannot be extended because it is in a  
21 sense jurisdictional in that it is barred. Litigants have  
22 tried to get it extended. They've tried to make technical  
23 grounds for why a late filing should be considered. They've  
24 made equitable tolling. No court has listened to it.

25           (Audio interference) deadline, if the deadline is

1 missed, it throws everything up at the air as to the  
2 applicability of the Reform Act's ability to bring about  
3 orderly litigation. We are not the last lawsuit the BlockFi  
4 officers and directors are going to see. That's just the way  
5 these things go.

6           So allowing the May 1st date to be met to the extent  
7 of allowing only the filing of those motions will preserve for  
8 the world at large, Your Honor. Not just the people who are  
9 before you now but for the world at large, anybody who wants to  
10 sue the BlockFi officers and directors got to come forward by  
11 May 1st and they've got to do it in Massachusetts and New  
12 Jersey.

13           That, believe it or not, is a good thing for BlockFi  
14 and the officers and directors because it corrals all the  
15 litigation in one place under one plaintiff, under one law  
16 firm, or multiple as the Court may decide. But we are not even  
17 asking that it be allowed to get to that stage. Only that the  
18 May 1st.

19           But, Your Honor, that may be too big a bite for this  
20 hearing and, therefore, I just bring it up as one of the  
21 reasons why the TRO application is not as simple as it sounds.  
22 That is one of the issues we'll be bringing before the Court on  
23 the April 19th PI hearing date. One is that the TRO -- to  
24 continue to TRO in its present form is overly broad and would  
25 do damage to our rights, it would unfairly advantage other

1 claimants to the \$30 million, and it would frustrate the  
2 objectives, which as the plaintiff's lawyer, I say a pro-  
3 defendant. It upsets the pro-defendant objectives of the  
4 PSLRA.

5 I'm raising that not to ask you to make a ruling  
6 today. I started by saying I agree to the TRO for the 28 days  
7 until we get to April 19th. And that's it. My request to you  
8 before I started this perhaps overly lengthy presentation, but  
9 I'm sorry, is may I make a motion for expedited discovery, Your  
10 Honor?

11 THE COURT: All right. Let me hear -- I'll address  
12 that and the other issues. Let me hear from Mr. Fishbein.

13 MR. FISHBEIN: Thank you, Your Honor.

14 I don't want to duplicate what Mr. Squitieri said and  
15 I think that our position is slightly different than his in  
16 dealing with the PSLRA issues. But let me make a few comments  
17 here.

18 As you know, I represent Antonie Elas and the  
19 putative class in the Massachusetts action that was captioned  
20 Elas v. Zac Prince and Others. My client, Antonie Elas, has  
21 also been named as a defendant in Adversary Proceeding 23-1071.  
22 Now my client has not been served yet with the complaint.  
23 We've gotten email copies of everything, and we have as you  
24 heard been in communication with debtors' counsel.

25 And yesterday, the Court directed that the TRO papers

1 be served on us by email. But the complaint has not yet been  
2 served on my client. And just for the record, debtors' counsel  
3 filed a certification of service this morning in the adversary  
4 proceeding, that's Docket Number 9, that incorrectly identified  
5 me as counsel for Trey Green. I am not counsel for Trey Green.  
6 Mr. Squitieri is. I am counsel only for Antonie Elas.

7 Now as a little background on our Massachusetts case,  
8 it asserts claims under Sections 5, 12, and 15 of the 1933  
9 Securities Act and Sections 10(b) and 20 of the 1934 Securities  
10 Exchange Act. As such, the Private Securities Litigation  
11 Reform Act applies to the case. That statute, PSLRA is what we  
12 refer to it as, is codified in 15 U.S.C. Section 78U-4. Set  
13 forth in that statute are provisions that dictate a process by  
14 which the district court determines who will be appointed lead  
15 plaintiff in a case that is brought under the Securities Act or  
16 the Securities and Exchange Act.

17 The first requirement is that there be a publication  
18 of a notice advising potential members about the filing of the  
19 case and providing them an opportunity to appear and file a  
20 motion to be appointed lead plaintiff. We published our PSLRA  
21 notice for the Massachusetts lawsuit on March 1st. If people  
22 are interested, as you heard, class members have 60 days or  
23 until May 1st to file a motion to be appointed lead plaintiff.

24 Now we don't know who is going to appear and file a  
25 lead plaintiff motion in our case. Our client certainly



1 intends to. In most cases, there are multiple lead plaintiff  
2 movants. And in those cases, there can be multiple rounds of  
3 briefing and usually a hearing is held and the court will make  
4 a decision as to who should be the lead plaintiff.

5           The PSLRA has guidelines and presumptions that govern  
6 how a court selects a lead plaintiff. What is important,  
7 though, is that this process does not involve the defendants.  
8 It is, in essence, a fight just between plaintiffs and any  
9 competing movants. Defendants do not have a say in the  
10 selection of the lead plaintiff, and they do not get involved  
11 in the briefing and arguing the motion. So they don't have to  
12 worry about it and expend resources.

13           By asking for the stay here to be applied to our  
14 case, the proposed TRO here would stop that process, at least  
15 with respect to my client. But I don't believe that this Court  
16 can do that. The PSLRA was adopted in 1995. There have been a  
17 number of cases that have held that the 60-day rule is a strict  
18 requirement. Lead plaintiff motions have been rejected for  
19 being filed even one day late.

20           We have done an exhaustive search and not found a  
21 single case where the 60-day deadline has been tolled, stayed,  
22 or extended. It's just not anything that we have seen done  
23 before and would be extreme in this case. Our view is this.  
24 We do not believe that a TRO is necessary here. A TRO is meant  
25 to preserve the status quo. Nothing is going to happen in our

1 Massachusetts case before the PI hearing that is scheduled for  
2 April 19th. As I said, lead plaintiff motions are not due  
3 until May 1st. Presumably, a decision will be made at the  
4 April 19th hearing on the PI motion before May 1st.

5           Until then, plaintiff will not be doing anything to  
6 prosecute the case. Now the debtors are concerned because two  
7 of the individuals, Prince and Cheela, have been served in our  
8 case and they have to answer or otherwise respond to the  
9 complaint by March 30th. That's their concern. But it has  
10 always been standard practice in PSLRA cases that the date for  
11 defendants to respond is extended by stipulation and order of  
12 the Court until after the lead plaintiff determination has been  
13 made and usually after an amended complaint has been filed.

14           We have already offered and agreed to do that with  
15 respect to the individual defendants here so they will not have  
16 to do anything to respond to the complaint on March 20th. They  
17 do not have to do anything to respond to the PSLRA motions.

18           Now the discussions that we've had and the offer to  
19 extend the response date, it's a little bit challenging here as  
20 debtors' counsel have repeatedly told us they're not  
21 representing any of the individual defendants and none of them  
22 have any counsel that have appeared yet in Massachusetts.

23           Nonetheless, we're willing to agree that the March 30  
24 response date for the two defendants that have been served as  
25 well as the response date for any of the other individual

1 defendants will also be stayed until after the lead plaintiff  
2 process has been played out. That's the main reason why we  
3 don't think there is a need for a TRO in this case.

4 Now, debtors' counsel presented us with a draft  
5 stipulation regarding the injunctive relief. We were generally  
6 in agreement with the stipulation but there were a couple of  
7 items that we wanted to add to it so that our client's interest  
8 would be protected. Fundamentally, we don't believe our  
9 client's interest and the claims that they have asserted have  
10 anything to do with this bankruptcy.

11 There were a number of items in particular that we  
12 sought and we provided redline comments to debtors' counsel. I  
13 want to address them just briefly. One, we wanted the debtors  
14 to agree to preserve and maintain all sources of discovery in  
15 our case. We think that the PSLRA rules and other rules  
16 already require that, but we wanted that protection.

17 Second, we wanted to be able to file any order that  
18 the Court might enter with respect to this TRO. We wanted to  
19 be able to file that in Massachusetts and have it appear on the  
20 docket. That was rejected.

21 Three, we wanted the lead plaintiff process to  
22 proceed. Again, for the reasons that I indicated, there's  
23 nothing -- it has nothing to do with the defendants. Mr.  
24 Squitieri's position is that he wants those filed. Our  
25 position would be that we want them filed and that process

1 played out. And I'll address that a little more later.

2 Fourth in the proposed stipulation, we agreed that  
3 the individual defendants in our case do not need to appear,  
4 respond, or otherwise participate in the case until after the  
5 lead plaintiff process is done. I talked about that before.

6 And, finally, we wanted to seek assurances that the  
7 debtors in this bankruptcy would not seek to extinguish or  
8 discharge the claims that we had brought individually in our  
9 action against non-debtors. That's it. Otherwise, we were  
10 okay with the relief they sought.

11 We provided our suggested edits to them and offered  
12 to meet to discuss them hoping to avoid the need for both this  
13 TRO hearing and the injunction hearing. We made that offer  
14 several times. They initially refused and finally agreed to  
15 talk to us but after they filed the TRO papers. And when we  
16 did talk, they simply rejected our suggestions.

17 Now as Mr. Squitieri mentions, it's not necessary to  
18 resolve the issues with respect to the lead plaintiff process  
19 today. The preliminary injunction hearing is set for April  
20 19th. Lead plaintiff motions are not due until May 1st. That  
21 presumably gives the parties enough time to get the Court's  
22 guidance on whether the injunctive relief the debtors seek will  
23 exclude the lead plaintiff motion process.

24 And, again, as we did with the proposed TRO, we are  
25 willing to continue to discuss the parameters of an injunction

1 to avoid the need to have such a hearing. We think the  
2 defendants should not have to be involved in the Massachusetts  
3 litigation during this bankruptcy. We think that the lead  
4 plaintiff process can be carved out and allowed to proceed.

5 One other thought with respect to the TRO, I think  
6 it's clear what the TRO is really seeking here. The debtors  
7 are seeking to stay a case that has not asserted any claims  
8 against the debtors. They are seeking to extend a TRO to stay  
9 cases that have only brought claims against non-debtors. And  
10 to support that, you heard the arguments they have made about  
11 how their officers are having to spend time and there may be  
12 resources that are spent.

13 We've just been brought into this, and I'm certainly  
14 not a bankruptcy expert. I've only done preliminary research  
15 on this issue, and it is clear that there are cases that go  
16 both ways on whether a bankruptcy stay can be extended to non-  
17 debtors.

18 I do recognize the Court's recent decision in LTL  
19 Management. And while I think it's distinguishable, I  
20 certainly have no confidence that I can persuade you of that.  
21 in LTL Management, you lay out a three-part test to decide  
22 whether or not stay can be extended to non-debtors. I don't  
23 think two of the three parts are satisfied. I am not aware of  
24 any authority that gives you jurisdiction to stay the deadlines  
25 of the PSLRA, and I don't believe an injunction under 105(a) is

1 warranted.

2           There is severe harm to my client. That's where this  
3 TRO fails. If this TRO is extended, my client specifically  
4 will not be able to satisfy the 60-day requirement, and that  
5 will preclude us from ever being appointed lead plaintiff. Now  
6 you can rest assured that other movants, regardless of what you  
7 do here today, are going to file lead plaintiff motions. And  
8 while those motions will likely be stayed because I have no  
9 doubt the debtors will go in there immediately, there is no  
10 assurance that when that stay is lifted, we would be able to  
11 file our motions because the 60-day period will have expired.

12           So extending the stay would result in severe harm to  
13 my client specifically because of the expiration of the 60-day  
14 limit. Given that likelihood and yet uncertainty and given  
15 that we have agreed that the individuals do not need to respond  
16 to the complaint at this time because there is nothing that  
17 they will need to do in this case before the April 19 PI  
18 hearing, we do not believe there is a need for a TRO in this  
19 case.

20           Now what I would end with is that if the Court is  
21 inclined, however, to grant the TRO, we would ask that we'd be  
22 allowed to submit the revisions to the proposed order that  
23 we've already given the debtors and that they be addressed in  
24 any order that you might issue. Thank you.

25           THE COURT: All right. Thank you, Counsel.

1 Is there anyone else who wishes to be heard on this?

2 Ms. Furness, do you wish to address -- Mr. Kanowitz,  
3 do you wish address any of the issues raised as far as the  
4 language of the order, pointedly their preservation of  
5 discovery or the request to be able to file the order in  
6 Massachusetts or New Jersey, would it apply?

7 MR. KANOWITZ: Yes, Your Honor. Happy to take a  
8 couple of the issues.

9 I think there's a real misunderstanding from the  
10 class action plaintiffs' part about who we represent and what  
11 we're seeking and why we're seeking it. So a couple of issues  
12 raised by Mr. Squitieri.

13 First, on the issue of insurance, there is that Side  
14 A policy. It has not been tapped. The allegations that he  
15 raises are specious and in fact problematic and it's exactly  
16 why we need a TRO to protect this estate. In terms of  
17 discovery, we're happy to consider any type of discovery that  
18 the defendants in the adversary proceeding seek that they think  
19 they need in connection with the preliminary injunction  
20 hearing.

21 We are having Mr. Renzi as our witness. He will be  
22 available if necessary for an appropriate deposition in  
23 connection with the types of issues to be raised at the  
24 preliminary hearing. But we welcome them to send us whatever  
25 discovery demands.

1           We will respond in accordance with the Federal Rules,  
2 and if we have any disagreements, I'm sure Your Honor will  
3 listen to us and hear both sides out as to whether discovery  
4 should be had or be limited. But we're not there today, so I  
5 don't know exactly what Mr. Squitieri wants to hear or wants to  
6 get from us. But we'll consider that in due course.

7           As to what the plaintiffs' bar is basically saying to  
8 you is they know they violated the stay. They know these  
9 claims are really against the debtor, but they've named  
10 individuals so let them just go run their process and don't  
11 interfere. It sort of turns everything on its head.

12           The reason why the debtor has done what it has done  
13 in terms of starting this action is to protect the debtor and  
14 its estate and all creditors from these type of actions. So  
15 letting a process run that continues to violate the stay and/or  
16 continues to harm the debtor just doesn't work for us.

17           So I would suggest that those type of arguments, if  
18 they're going to raise them, they should brief them for the  
19 preliminary injunction hearing. We could respond. But for  
20 purposes today, speculation, it's not appropriate for a TRO  
21 hearing for them to tell you about how they want to continue to  
22 violate the stay. In fact, it serves our case well.

23           It's exactly why we need to shut everything down.  
24 They continue to go out there and solicit for new plaintiffs.  
25 They're jockeying to position. They're harming the estate. As



1 Ms. Furness alluded to, we are getting inbound from other  
2 people who are named defendants saying why is my name out  
3 there, why am I being sued, this is clearly inappropriate, you  
4 owe me indemnity, do I need to get my own lawyer involved. And  
5 the answer to that should be no.

6 And the real way to resolve this issue, Your Honor,  
7 is for the class action plaintiffs to withdraw their  
8 complaints. They could restart the process at an appropriate  
9 time when we're further down the road in this bankruptcy case  
10 to see exactly how this case shapes up, what our plan is going  
11 to be, how we're going to treat creditors, how we're going to  
12 use our assets including insurance proceeds. That is probably  
13 the most logical and commercial thing for the plaintiffs to do,  
14 but they won't do that.

15 So they're going to ask Your Honor to continue to  
16 violate the stay, to continue to, as one of the counsel said,  
17 to continue jockey for position to be lead counsel on something  
18 that we believe shouldn't go forward, is really a claim against  
19 the estate that will be dealt with the in the plan or  
20 reorganization one way or another. And so we're here today  
21 simply to ask can you please enter a TRO stopping this, we'll  
22 address it whatever we have to address in connection with the  
23 preliminary hearing on an injunction request as well as in any  
24 future hearings in this case in this adversary proceeding.

25 So unless you -- you know, as to document

1 preservation, of course, we've been preserving every single  
2 record for this estate for the benefit of all creditors and  
3 other regulatory interests. So there's been no destruction or  
4 concern about spoliation of any type of document in connection  
5 with this bankruptcy case.

6 THE COURT: All right. Thank you, Mr. Kanowitz, Ms.  
7 Furness and then I'll go back to you, Mr. Fishbein.

8 Ms. Furness?

9 MS. FURNESS: Your Honor, thank you. I just want to  
10 address a few things that Mr. Fishbein mentioned about the  
11 adversary defendants' draft TRO.

12 As I mentioned, they refused to recognize this  
13 Court's exclusive jurisdiction over the order. And we  
14 obviously don't agree to that. They put in demands about the  
15 plan. and release or extinguishments of claims in about the  
16 plan in their draft TRO. Absolutely no, the debtors can't  
17 agree to any future plan and what it may or may not contain.

18 In addition, their proposed TRO, I'm confident if  
19 they file it as they presented it to us, Your Honor will  
20 recognize this, but actually it relates to things in their  
21 lawsuit which doesn't make any sense about when things should  
22 be filed in the other lawsuits and when they don't.

23 But I do want to point this out, Your Honor, and I  
24 want to be perfectly clear. This is a problem of the adversary  
25 defendants' own making. They filed this lawsuit on February

1 28th and March 1. Had that not happened, we wouldn't be  
2 concerned about the PSLRA and, in fact, they could should they  
3 feel like all of these horrible things were to happen, if Your  
4 Honor decided to issue a TRO or said that the stay applied to  
5 these two lawsuits, in order to prevent all of those allegedly  
6 horrible things, they could non-suit their matters.

7           They put themselves in this position. There is not,  
8 as Mr. Fishbein said, some sort of horrible thing that's going  
9 to happen. If it were, they could have made that decision  
10 before and they can make that decision now. What this Court  
11 should be concerned with, and I know you are, is the effect on  
12 these debtors. And the effect on these debtors will be  
13 irreparable harm.

14           This is not some situation just about discovery or  
15 just about taking focus from the restructuring and the  
16 reorganization. Your Honor, this is about fundamental  
17 decisions, for example, whether BlockFi's products are  
18 securities or not, whether certain statements are violations of  
19 this securities law or that securities law, that will be made  
20 without any input, argument, or anything from these debtors.  
21 And that, again, is an irreparable harm and it goes beyond just  
22 payments of insurance proceeds.

23           And, again, Your Honor, we just request that you  
24 enter the TRO as submitted by the debtors. Thank you.

25           THE COURT: All right. Thank you.

1 Mr. Fishbein, last comments?

2 MR. FISHBEIN: Yeah, just a couple of comments.

3 First, while I appreciate the helpful advice from  
4 debtors' counsel about how to practice law, we can't do what  
5 they're suggesting. There are statutes and limitations, there  
6 are statutes of repose under the federal securities statutes.  
7 These claims needed to be filed. The PSLRA dictates what we  
8 need to do after they have been filed. That is what we are  
9 doing.

10 I have heard no response to the suggestion that we  
11 can alleviate [sic] any burden on the defendants or implicate them  
12 in any way by what I have suggested can be done, which is we  
13 will agree to extend the response date for the defendants and  
14 we think that the lead plaintiff process needs to continue.

15 Now, again, they did not respond to my argument that  
16 in reading LTL, they don't get a TRO because of the severe harm  
17 that will come to my plaintiff, my client, if this case is  
18 stayed. We will lose the ability to file a lead plaintiff  
19 motion. Others will file, and our ability will be gone. The  
20 severe harm here is to us.

21 THE COURT: Well, Mr. Fishbein, let me clarify that  
22 because my understanding was that that's really, and it's been  
23 suggested by your co-counsel, Mr. Squitieri -- well, in the  
24 other matter, counsel -- that that's a harm that may arise if I  
25 were to continue the stay after the 19th or enter injunctive

1 relief that carried forward after the 19th, that there's not  
2 necessarily any irreparable harm to your client now between  
3 today and when we have the preliminary injunction. You don't  
4 lose any rights.

5 MR. FISHBEIN: That is correct, and that's what I  
6 said is that you don't necessarily have to decide today whether  
7 those lead plaintiff proceedings are going to go forward with  
8 respect to our two clients. We wanted to tee that issue up  
9 because it can be addressed in the TRO. You can put language  
10 in the TRO that I think we would be agreeable to which would be  
11 that the stay does not apply, the TRO does not apply to the  
12 lead plaintiff proceedings as they are going forward now.

13 I mean we don't have to do anything until May 1st. I  
14 do want to respond to this idea about we're issuing press  
15 releases that name these people and they're getting phone calls  
16 that they have to answer. I want to point out that those press  
17 releases are not coming from us. They are coming from other  
18 attorneys who are looking for people who are injured and may be  
19 interested in moving for lead plaintiff. We don't have  
20 anything to do with that. That's part of the process.

21 People in this 60-day period are looking to see if  
22 there are other people who might be interested in moving for  
23 lead plaintiff. And the Court, it's a little ironic, but the  
24 Court basically picks the biggest loser after the 60-day period  
25 to be appointed lead plaintiff. So that process is going to

1 continue. You can tell us not to issue any press releases, and  
2 we will follow that. That's not going to stop that process.

3 I think the more sensible thing is to give the  
4 individual defendants a stay so that they do not have to  
5 respond to the complaint on March 30th and allow the lead  
6 plaintiff motions to go forward.

7 And the last thing I want to say is I recognize that  
8 there are some issues here that may implicate the interest of  
9 BlockFi, but I also want to make it clear that the claims that  
10 we have asserted in our case are claims for misrepresentations  
11 and omissions made by the individual defendants. That's why  
12 they have liability under the federal securities laws.

13 There was a previous case against BlockFi that Mr.  
14 Squitieri brought that was stayed by the bankruptcy case.  
15 There's no dispute about that. But the individual defendants  
16 have responsibility. Some of them that they complain are not  
17 individually named, they are defendants because they are  
18 control persons under the 34 Act.

19 So the idea that we tried to do an end-run around the  
20 defendants and we violated the stay, that's just not true. We  
21 have asserted claims that we believe are outside the scope of  
22 bankruptcy, but I recognize what will happen. We just don't  
23 think a TRO is necessary at this point, and we think that we  
24 should be allowed to continue the lead plaintiff process.

25 THE COURT: All right. Thank you, Counsel.

1 Mr. Squitieri, very quickly.

2 MR. SQUITIERI: Very briefly, Your Honor, and only to  
3 address two matters that I think were way out of line by mr.  
4 Kanowitz.

5 One, he's alluding to the -- or, rather, he's  
6 implying that I made up and know it was specious that claims  
7 have been paid under the \$30-million policy. If he's telling  
8 me they were not paid, then we'll find that out in discovery.  
9 But it was reported in the Financial Press, and that's why I  
10 brought it up.

11 The other implication I resent is that I violated the  
12 stay. The stay was a 362 stay. It applies to the debtor by  
13 its terms. When debtors' counsel had a chance to appear before  
14 the Court with Docket Number 12, motion seeking entry of an  
15 order restating and enforcing the worldwide stay, they  
16 submitted an application to the Court for an order, that order  
17 had provisions 2-A to 2-I and nowhere did they ever ask that  
18 actions against officers and directors or any third parties be  
19 stayed.

20 So I did not violate an order, and I want that stated  
21 on the record. Thank you.

22 THE COURT All right. Thank you, Counsel.

23 Thank all counsel. Well argued.

24 As you could tell from my comments, I was trying to  
25 distinguish the relief that's necessary today as far as the TRO

1 versus the relief that's sought as far as part of the  
2 preliminary injunctive application. There's a slight  
3 difference. The standard we all know are roughly the same.

4           While there may not be action taken between now and  
5 when we have further hearings, it's not for the Court to guess  
6 at that. I'm going to enter a TRO today because what is of  
7 import to the Court is the threat of harm that comes to the  
8 debtor based on the potential for indemnification obligations  
9 and the potential for depletion of insurance, the latter being  
10 clearly in this Court's view an estate asset, a potentially  
11 wasting asset. And that potential harm is sufficient  
12 irreparable harm, in this Court's view, today to get us to the  
13 next hearing.

14           I respect the concerns raised as far as the issues  
15 under the federal statute and would look forward to weighing in  
16 on those when the time comes after the briefing. I do not  
17 intend to place the defendants in this case, the plaintiffs in  
18 the ongoing litigation, at a disadvantage unnecessarily. So I  
19 will certainly consider what steps need to be taken to, in  
20 essence, preserve the status quo, which is the goal of a TRO,  
21 on both sides.

22           Now for the record, I am satisfied that the debtor  
23 has met the standards for the entry of a TRO when taking into  
24 account the balancing of the harms, the potential depletion of  
25 estate assets, the potential pursuit of claims for which the



1 debtor would have indemnification obligations.

2 I would ask the parties, I don't -- in response to  
3 Mr. Squitieri's concerns regarding discovery, I don't call or  
4 ask for motions for discovery. I prefer to address those  
5 issues in conference calls if the parties after they meet and  
6 confer can't come to an agreement. I think everybody prefers  
7 that.

8 And I would ask the parties to meet and confer to  
9 discuss the discovery that is being sought. April 19th is an  
10 omnibus date for BlockFi. We have other matters including  
11 wallet motions, exclusivity motions. I would ask counsel to  
12 offline discuss whether a separate date would be worthwhile to  
13 have a hearing on the preliminary injunction. It could be the  
14 20th. it could be the 21st. it could go into May depending  
15 upon -- well, there is the May 1 deadline. I recognize that.

16 We could, of course, also bifurcate the issues and  
17 simply have that lead counsel motion issue be the topic on  
18 April 19th because that is one of the immediacy -- that has  
19 immediacy to it as opposed to the other issues that would go  
20 forward where we have an evidentiary hearing on the preliminary  
21 injunction. It would seem to the Court that the thrust of the  
22 concerns raised today by the defendants in this action revolve  
23 around that process and the Court would consider addressing  
24 that preliminarily on the 19th or another date.

25 I will -- Mr. Fishbein, if you want to send the Court

1 your proposed changes, I will take a look at them. From what  
2 I've heard, preservation of discovery is not going to be an  
3 issue. I'm not really sure what the pros and cons or the  
4 prejudices to the debtor are with respect to where to file  
5 orders.

6 I am certainly not going to require the debtor at  
7 this juncture to limit themselves under any plan. Those are  
8 for fights that -- at another time. But I certainly will look  
9 at any concerns you had as far as language.

10 I will enter the TRO, at least a bench order today so  
11 that it's in place. I will refine it with an order as soon as  
12 I take a look at any suggested language. But we'll set the  
13 hearing down for the 19th but, of course, the parties may want  
14 to confer regarding a stand-alone day depending upon  
15 expectations as far as witnesses and the like.

16 As far as discovery, have a meet and confer, discuss  
17 what's needed for the limited issues that are there. And if  
18 there's an issue, reach out for chambers. We'll have a  
19 conference call and just resolve it.

20 Mr. Fishbein, I see your hand.

21 MR. FISHBEIN: Yeah. Given your guidance, I don't  
22 think that there's a need for me to submit a stipulation with  
23 our proposed changes. One exception, which I think we can talk  
24 about now on the record is the ability for us to file whatever  
25 order you enter today on the docket in the Massachusetts and

1 the New Jersey cases.

2 We have been threatened with contempt of court  
3 motions a number of times in this process for filing the  
4 complaint. And I would like assurances that that's not going  
5 to happen if we take the action of filing the order that you  
6 enter today on the docket in our two respective cases.

7 MR. KANOWITZ: Your Honor?

8 THE COURT: Let me hear from debtors' counsel.

9 MR. KANOWITZ: Your Honor, that's not going to be a  
10 problem. It was the package of problems as opposed to that one  
11 particular sentence in that revised order, as Your Honor is  
12 well aware of the issues raised that you just identified. So,  
13 yes, whatever order Your Honor submits on the TRO, we welcome  
14 it to be publicized in connection with the Grand Ellis  
15 (phonetic) actions so that we don't have to come back here to  
16 other and add other class action lawsuits.

17 THE COURT: All right. And we resolved that issue.

18 I'll take a -- do I have, Ms. Furness, do I have a  
19 copy of what we'll call a final order to take a look at?

20 MS. FURNESS: Your Honor, you have a copy of what our  
21 proposed order is. We filed it yesterday. You don't have a  
22 copy of Mr. Fishbein's, but I'm sure that they will get that to  
23 you. But our proposed order was filed on the docket, yes, Your  
24 Honor.

25 THE COURT: All right. Well, I think I'm hearing

1 from Mr. Fishbein we basically resolved the open issue -- along  
2 with my other comments. So I'll take a look at the order and  
3 see if it meets everybody's expectations. And I'll let counsel  
4 after the hearing maybe have a -- schedule a call among you all  
5 to see how you want the 19th to play out time-wise. And the  
6 Court -- April is difficult, but the Court will do its best to  
7 try to accommodate scheduling.

8 MR. KANOWITZ: Yes, Your Honor. Forthwith, we'll get  
9 together and have those meet and confers and come back to Your  
10 Honor. We recognize what's on the 19th is a heavy lift for the  
11 Court. We don't need to add to that burden.

12 THE COURT: All right. Then I appreciate everybody's  
13 time and effort as well as argument, and professionalism,  
14 number one and foremost.

15 Does anyone need to be heard on any other matters for  
16 today?

17 (No audible response)

18 THE COURT: Then I thank you. Take care.

19 MR. SQUITIERI: Thank you, Your Honor. Good day.

20 THE COURT: You're welcome.

21 MR. FISHBEIN: Thank you, Your Honor.

22 MS. FURNESS: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 (Proceedings concluded at 12:53 p.m.)

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C E R T I F I C A T I O N

We, KAREN K. WATSON, and DIPTI PATEL, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Karen K. Watson

KAREN K. WATSON, CET-1039

/s/ Dipti Patel

DIPTI PATEL, CET-997

J&J COURT TRANSCRIBERS, INC.

DATE: March 29, 2023